



NATIONAL HEADQUARTERS CIVIL AIR PATROL

CAP REGULATION 36-2 CORRECTED COPY

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Nondiscrimination

COMPLAINTS UNDER THE CIVIL AIR PATROL NONDISCRIMINATION POLICY

This regulation assigns responsibilities and prescribes procedures for addressing alleged violations, involving CAP members, of Civil Air Patrol's Nondiscrimination Policy as specified in the Civil Air Patrol Constitution. This Program implements provisions of Title VI of the Civil Rights Act of 1964 (PL 88-352), Title III of the Age Discrimination Act of 1975 (PL 94-135), Department of Defense (DOD) Directive 5500.11, *Nondiscrimination in Federally Assisted Programs*, DOD Directive 1020.1, *Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of Defense*, and Air Force Instruction (AFI) 36-2707, *Nondiscrimination in Programs and Activities Assisted or Conducted by the Department of the Air Force*. **Note: This regulation replaces CAPR 39-1 and is revised in its entirety. Shaded areas identify corrected copy changes.**

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1. Background:

a. The Constitution of the Civil Air Patrol, Article VII, states, "Discrimination based on race, sex, age, color, religion, national origin, or disability is prohibited."

b. Title VI of the Civil Rights Act of 1964 provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance.

c. Title III of the Age Discrimination Act of 1975 provides that no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance.

Supersedes CAPR 39-1, 1 February 1989.

OPR: EXI

Distribution: In accordance with CAPR 5-4.

d. DOD Directive 5500.11, *Nondiscrimination in Federally Assisted Programs*, is the basic implementing directive for Department of Defense compliance with the Title VI, Civil Rights Act of 1964, and is applicable to the Civil Air Patrol.

e. DOD Directive 1020.1, *Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of Defense*, is the basic implementing directive for DOD compliance with the Rehabilitation Act of 1973, Section 504. It states that no qualified handicapped person in the United States shall on the basis of handicap be excluded from participation in, denied the benefit of, or otherwise subjected to discrimination under any program or activity conducted by the Federal Government or receiving Federal financial assistance.

f. AFI 36-2707, *Nondiscrimination in Programs and Activities Assisted or Conducted by the Department of the Air Force*, is the Air Force implementing directive for DOD Directive 5501.11 and DOD Directive 1020.1.

2. Civil Air Patrol Policy of Nondiscrimination. It is Civil Air Patrol policy that no member shall be excluded from participation in, denied the benefits of, or subjected to discrimination in any CAP program or activity on the basis of race, sex, age, color, religion, national origin, or disability (formerly handicap). It is Civil Air Patrol policy that no applicant meeting CAP's minimum age requirement will be denied membership in CAP on the basis of race, sex, age, color, religion, national origin, or disability (formerly handicap).

3. Definitions. For the purposes of this regulation:

a. "CAP Member" See CAPR 39-2, *Civil Air Patrol Membership*.

b. "Complainant" means one who identifies a possible violation of CAP's nondiscrimination policy, and brings it to the attention of the Equal Opportunity Officer (EOO) or a person in a position of leadership or authority.

c. "Complaint" means a written document listing facts and circumstances specifically alleging a violation of CAP's nondiscrimination policy.

d. "Investigation" means an authorized, systematic, and detailed examination to uncover facts and determine the truth and validity of a complaint.

e. "Qualified Member with a Disability" means a CAP member with a disability who, either with or without reasonable accommodation, can perform the essential functions required by a CAP program or activity that such CAP member desires to participate in.

f. "Report of Investigation" (ROI) means the final report written by the EOO or the assigned investigative officer outlining the findings and conclusions of the investigation.

g. "Reprise or Reprisal" See CAPR 123-2, *Complaints*.

h. "Respondent" means a person, named in a formal complaint, who is alleged to have committed, or have been responsible for others who allegedly committed, a violation of CAP's nondiscrimination policy.

4. Responsibilities:

a. **National Headquarters:**

(1) The Civil Air Patrol Executive Director (EX) shall appoint a Corporate Equal Opportunity Officer (EOO).

(2) The EX shall seek concurrence from the National Commander on the EOO appointment.

(3) The EOO will be responsible for implementing a program for addressing the nondiscrimination concerns of and for the handling of all discrimination allegations/complaints that relate to CAP volunteer members and CAP employees.

b. CAP National Commander:

(1) Coordinate with the EX in the selection and appointment of the EOO

(2) Annually, issue to all units within CAP a Commanders Statement of Nondiscrimination to include directions for the widest dissemination of the CAP Nondiscrimination Policy

c. All Commanders:

(1) Are responsible for implementing and enforcing CAP policies, procedures, and directives prohibiting discrimination, as well as DOD Directives 5500.11, 1020.1, and AFI 36-2707, throughout their respective commands.

(2) Will ensure that the CAP Nondiscrimination Policy is briefed annually to all members within their respective commands.

(3) Will maintain such records as they determine necessary to ensure compliance with these directives. These records will be made available for inspection upon request of the EOO, assessment teams (see CAPR 123-3) or other competent authority.

d. CAP Members:

(1) Will comply with the letter and the intent of the CAP Nondiscrimination Policy.

(2) Will cooperate with the EOO, or his/her designated representative, in the investigation and resolution of complaints of discrimination or allegations of violation of the CAP Nondiscrimination Policy.

5. Submission of Complaints:

a. Only members, the parents or legal guardians of cadet members under the age of 18 filing for the cadet member, or non-members alleging denial of membership due to discrimination, have the right to file a complaint under the provisions of this regulation.

b. All complaints of discrimination must be in writing, dated and signed by the complainant. The complainant shall submit the complaint within 60 days of the occurrence or action upon which the complaint is based or within 60 days of learning of the occurrence or action.

c. Complainants will forward complaints of discrimination to the EOO, at CAP National Headquarters, for handling. Any commander or inspector general receiving a complaint of discrimination shall also forward it to the EOO for handling.

d. Any member, inspector general, or commander who needs assistance in determining whether an allegation/complaint constitutes discrimination, should call the EOO at National Headquarters (NHQ). Contacting the EOO for this purpose shall not be considered a violation of the chain of command.

e. Complaints may be delivered personally, by mail, or by e-mail. The date of actual receipt or 5 days following the date of the postmark, whichever is earlier, is the effective date of the complaint. The complaint must be annotated with the date received and the original postmarked envelope retained to properly establish the effective date. The effective date of e-mail complaints will be the date of actual receipt only if a written follow-up, with signature, is received within 8 days following the date of the receipt of the e-mail. Originals or copies of all available documentation in the possession or control of the complainant must accompany complaints.

f. Complaints against CAP employees will be forwarded to the EOO and will be handled in accordance with the Corporate Employee Handbook.

g. Complaints against the EOO will be forwarded to the National Headquarters Executive Director (CAP/EX) to be handled in accordance with the Corporate Employee Handbook.

h. Any member taking reprisal action against another member who has exercised their rights and/or responsibilities under this regulation is in violation of the CAP Whistleblower Protection Program, outlined in CAPR 123-2, as well as the Civil Rights Act of 1964, which states, "It shall be an unlawful...practice...to discriminate against any individual...because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing..."

6. Processing of Complaints:

a. The complainant shall receive written acknowledgment of the complaint within 20 days of the effective date of the complaint.

b. The respondent(s) shall be notified of the complaint within 30 days of the date that an analytical review has determined the allegation and evidence submitted are sufficient to require the conduct of an investigation.

c. In accordance with the Title VI of the Civil Rights Act of 1964, the identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this program, including the conduct of any investigation, hearing, or proceeding.

d. In the case of a discrimination complaint against a senior level CAP official, as defined in CAPR 123-2, the EOO will also:

(1) Notify NHQ CAP/EX, CAP-USAF Inspector General (CAP-USAF/IG), CAP Inspector General (CAP/IG), and the CAP National Commander (CAP/CC).

(2) Following the completion of an investigation, forward a copy of the final Report of Investigation (ROI) to the CAP/CC, NHQ CAP/EX, NHQ CAP General Counsel, and the CAP-USAF/IG.

(3) The EOO or an investigating officer (IO), appointed by the Board of Governors, will handle all discrimination complaints against the National Commander or National Vice Commander in accordance with this regulation. Any allegations of personal misconduct or moral turpitude will be promptly turned over to the National Legal Officer in accordance with the CAP Constitution and Bylaws. The CAP National Legal Officer will determine if any action is warranted under CAPR 35-7, *Removal of National Commander or National Vice Commander*.

(4) The EOO or an investigating officer (IO), appointed by the Board of Governors, will handle all discrimination complaints against the CAP/IG in accordance with this regulation.

(5) Complaints against non-Air Force members of the Board of Governors are filed with the Secretary of the Board of Governors and investigated as determined by the Board of Governors. Complaints against members of the Board of Governors, appointed solely by the Secretary of the Air Force, will be filed with the CAP-USAF/IG and investigated IAW the appropriate Air Force Instructions.

e. By the fact of his/her appointment, the EOO is directed to conduct, or cause to be conducted, an analytical review of all allegations of discrimination and an investigation of all complaints of discrimination deemed sufficient to require the conduct of such an investigation in as efficient and expeditious manner as possible. The EOO is authorized to appoint investigating officer(s) when, in the EOO's opinion, such appointment will foster an efficient and expeditious conclusion of an investigation. It is the responsibility of the EOO to ensure that an objective inquiry is conducted to find factual information.

(1) The EOO, or the appointed IO, will make every effort to complete the investigation, write the ROI, and submit the report for review and final determination within 100 days of the effective date of the complaint.

(2) If the EOO, or IO, finds that, due to extenuating circumstances, the complaint investigation cannot be completed within 100 days of the effective date of the complaint, he/she will advise the CAP/CC as to the reasons for the delay and an estimated date when the investigation will be completed.

(3) ROIs resulting from complaints of discrimination will be forwarded to the CAP/CC for review and final determination.

f. Since the purpose of an investigation is to ascertain facts, complainants, respondents, and witnesses are required to cooperate fully. Failure of CAP members to respond with truthful and complete information or any action by CAP members to impede an investigation in any way may subject that member to disciplinary action up to and/or including termination of membership in accordance with applicable CAP regulations. This is an administrative process. Therefore, there is no requirement for legal representation, a formal hearing, or application of the rules of evidence.

g. Conclusion classifications shall include one of the following categories:

(1) SUSTAINED -- an allegation is "sustained" when the inquiry reveals "a preponderance of evidence" in support of the allegation.

(2) NOT SUSTAINED -- an allegation is "not sustained" when the inquiry determines the act complained of did not occur, was justified according to applicable directives, or there was not a preponderance of evidence to support the allegation.

h. The findings of the EOO or the investigating officer shall be based upon a preponderance of evidence.

i. The investigation and ROI are executed for the CAP/CC and shall not be released to anyone else except under the provisions of paragraphs 6d(2), above and 7b, below.

j. Upon receipt of the ROI, and being satisfied that the complaint has been fully investigated, the CAP/CC will make a final determination as to the disposition of the complaint.

(1) The CAP/CC will notify the complainant, respondent, and the respondent's commander of the final action, by written memorandum, no later than 120 days from the effective date of the complaint unless the complaint process has been delayed as described in paragraph 6e(2), above. In this case, CAP/CC will provide written notification within 20 days of receiving the ROI. The CAP/CC will send a copy of each notification to the EOO for inclusion in the official case file.

(2) Upon receipt of the copies of all written notifications, the EOO will forward a copy of the case file to the CAP-USAF/IG for distribution in accordance with AFI 36-2707.

7. Reports:

a. The EOO will maintain, at National Headquarters, such records and reports as necessary to ensure compliance with the CAP Nondiscrimination Policy, Title VI, DOD Directives 5500.11 and 1020.1, and AFI 36-2707.

b. ROI and case files created under the provisions of this regulation are privileged information documents. They will not be released (in whole or in part), reproduced, or given additional dissemination (in whole or in part) outside of Equal Opportunity or legal officer channels without prior written approval of the EOO and the CAP National Commander after consultation with the CAP National Legal Officer. In the event the complainant is a CAP employee, CAP/EX will also be consulted prior to any release.